Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	))))))	CS Docket No. 01-129

To the Commission:

MOTION OF KNOLOGY, INC. TO FILE LATE COMMENTS IN RESPONSE TO NOTICE OF INQUIRY

1. Knology, Inc. hereby seeks leave to file comments in response to the Commission's Notice of Inquiry ("NOI") in connection with its annual assessment of competition in the market for the delivery of video programming, as mandated by the Cable Television and Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").

2. Knology's purpose in making this request is not to add any new issues to this proceeding. Instead, it is to inform the Commission that the tactics being used by Charter Communications, Inc. ("Charter") to undermine competition in Scottsboro, Alabama – which are discussed in the comments filed by the target of those tactics, the Scottsboro Electric Power Board ("SEPB") – are being used in other markets too, including against Knology in Montgomery, Alabama and West Point, Georgia.

3. If Knology's comments are accepted, the Commission will have a fuller understanding of the extent to which Charter is employing these tactics against its competitors around the country, the threat to competition these tactics present, and the need for regulatory action to stop them immediately.

4. For all the foregoing reasons, Knology respectfully requests that its late filed comments be accepted and made part of the record in this proceeding.

Respectfully submitted,

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In the Matter of:	)	
	)	CS Docket No. 01-129
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	

To the Commission:

COMMENTS OF KNOLOGY, INC.

1. Knology, Inc. submits these comments in response to the Commission's Notice of Inquiry in connection with its annual assessment of competition in the market for the delivery of video programming, as mandated by the Cable Television and Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").

2. Knology submits these comments for one purpose: to inform the Commission that the tactics Charter Communications Inc. ("Charter") is using against the Scottsboro Electric Power Board ("SEPB"), as described in the comments filed by SEPB in this proceeding, are also being used against Knology, in an obvious effort by Charter to regain its position as the sole cable provider in markets where these two companies compete.[1]

3. These tactics are anticompetitive and unlawful, and the Commission must take immediate action to prevent them from achieving their intended goal, or from being used against other competitive video programming distributors in the future.

[1] *See* Comments of the Scottsboro Electric Power Board, CS Docket No. 01-129, at 5-7 (filed August 3, 2001) (hereinafter "Scottsboro Comments").

Background

4. Knology is a broadband communications company that provides consumers in seven markets in the southeastern United States with local and long distance telephone, high-speed data transmission, and digital and analog cable television services. It does so in each using new or upgraded networks relying extensively on fiber optic technology.

5. In each of these markets, Knology competes with incumbent cable providers which, before Knology's arrival, faced little competition in the sale of these services. Knology's survival depends on its continued ability to attract and retain sufficient numbers of customers for each of its service offerings – including cable – to fund the cost of operating its networks.[2]

6. Knology owes its existence to the Telecommunications Act of 1996, and is precisely the kind of competitor Congress wanted to encourage when it removed the regulatory barriers that prevented the bundling of cable and telephone service offerings in the past.

Competition With Charter

7. Knology competes with Charter today in three markets: West Point, Georgia; Columbus, Georgia; and Montgomery, Alabama.

8. In two of these markets, West Point and Montgomery, Charter is the dominant provider of cable service, and its only competitor is Knology. In these two markets, Charter overlaps Knology's service areas entirely.[3]

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[2] In some of its markets, Knology entered by purchasing systems owned by other competitive cable operators and then upgrading them to provide the bundle of communication services Knology's business plan requires.

[3] In the third market, Columbus, three cable operators provide service, with Mediacom Communications Corp. serving the greatest number of customers, followed in order by Charter and then Knology. In this market, Charter's service area does not completely overlap Knology's.

9. In both of these markets today, Charter is offering severe discounts on service prices, cash payments, and other financial benefits to induce Knology's customers to switch to Charter. These tactics are the same as those Charter is employing against the SEPB in Scottsboro, and to the same apparent end: to undermine Knology's ability to compete, drive it from these markets, and restore Charter to its position as the sole cable provider there.

West Point

10. Knology has provided cable service in West Point since 1998, when it obtained franchises from several local jurisdictions and built a hybrid fiber optic and coaxial cable system there to serve them.[4] Since long before that date Knology has also provided local exchange telephone service in West Point, using separate "twisted pair" facilities. Knology today has nearly 3,000 customers for its cable services in this market.

11. The system Charter operates in West Point was established in the late 1950s. The system was expanded and improved over the years until Charter bought it from Marcus Cable in 1999. At the present time, Charter has approximately 10,000 customers for its expanded basic cable service in this market.

12. The initial reaction of Charter's predecessor when Knology first began providing cable service in West Point was to cut its prices in an effort to protect its market share. Knology met those reductions, which prompted another round of price cutting by the incumbent. This form of "bare knuckled" competition continued until, by the end of 1999, both Knology and

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4 The West Point market also encompasses Valley and Lanett, Alabama and certain unincorporated areas located between these communities and West Point.

Charter were charging around $20 per month for expanded basic service – well below the national average.[5]

13. Charter's discounting, however, did not carry over into any of the nearby communities where it operated systems in the absence of competition from Knology. In these areas, Charter's prices ranged to more than $35 per month for expanded basic service, above national average even for monopoly systems.[6]

14. Earlier this year, Charter opened a new front in the battle with Knology in West Point – offering an additional cash payment of $200 and free installation to every Knology customer who would switch to Charter. In some cases it appears that Charter asked Knology's customers to continue carrying Charter's service for at least 12 months in order to qualify for this offer. For those agreeing to do so, the effective cost of cable service due to this program was immediately reduced to less than $4 per month.

15. Charter's cash payments program was, in effect, a switch from "bare knuckled" to "brass knuckled" tactics in West Point. These tactics, moreover, are achieving their intended result. Customers lured by the offer of cable service for a miniscule price (with free installation) are abandoning Knology and signing up with Charter.

16. No one faults these customers for taking "free money" from Charter, but if Knology is driven from the market as a result, they will surely restore Charter to the profits it is losing – and then some – in the future. *See, e.g., Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.,* 509 U.S. 209, 222-24 (1993) (successful predatory pricing allows recoupment of

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5 *See, e.g., Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 (Statistical Report on Average Prices for Basic Service, Cable Programming Services, and Equipment), Report on Cable Industry Prices,* 15 FCC Rcd 10927 (2000) (national average for expanded basic service in competitive markets is $30.63).

6 *Id.* (national average price in noncompetitive markets is $32.25).

costs of predation after competitor's exit); *In re PanAmSat Corp. v. Comsat Corp.,* File No. E-96-21, FCC 97-172, ¶¶ 16-20 (rel. May 20, 1997) (same).

<u>*Montgomery*</u>

17. In Montgomery, Knology has operated its cable system since 1997, when it purchased a system then owned by Montgomery Cablevision and Entertainment Inc., and upgraded it so Knology's bundle of communication services could be offered to consumers. By the end of 2000, Knology had nearly 28,000 customers for its basic cable service, including those who also purchased other communication services from the company.

18. The system Knology purchased in Montgomery was already competitive when Knology assumed control. At that time, the incumbent provider was Tele-Communications Inc. ("TCI"), but when TCI was merged into AT&T Corporation in 1999, the system came under the control of an AT&T subsidiary, AT&T Broadband and Internet Services. AT&T sold the system to Charter earlier this year, and control passed to Charter over the summer. At the present time, this system has an estimated 75,000 "basic cable" subscribers.

19. When Charter took control of the system in Montgomery, almost immediately it began a campaign to undermine competition in the market. Adopting the same tactics it had employed against Knology in the Valley – but upping the ante considerably – Charter began offering consumers $300 if they would switch from Knology to Charter. It then slashed its prices for service – in this case on its digital tier – as a further inducement for residents to cancel their service with Knology and go over to Charter.

20. At this time, Charter in Montgomery is reportedly offering "digital complete basic" service in Montgomery for less than $23.00 per month – which includes not only all analog "expanded basic" services, but nearly 50 additional channels available only on the digital

tier, as well as 50 more of digital music. Moreover, Charter will also forgive the "old cable debt" customers have accrued with other providers (and even Charter, previously) before signing up to take advantage of the other deals Charter is offering.

21. In Montgomery, too, Charter's "brass knuckled" blows are hitting their target – Knology is losing customers who cannot ignore the discounted offerings, cash payments, and debt forgiveness Charter is dangling in front of them. Yet, here too, these inducements may be short lived: if Knology is not able to remain competitive and is forced from Montgomery, there will be nothing to stop Charter from more than making up for what it has spent to buy back its monopoly there.

Discussion

22. The actions Charter is taking against Knology in West Point and Montgomery are plainly part of the same strategy Charter is employing against the SEPB in Scottsboro. As discussed in the SEPB's filing, Charter has slashed prices for cable service in that community too, paid bounties to SEPB customers willing to switch to Charter, and established an "amnesty program" to forgive SEPB customers' old debts to Charter (or its predecessor in Scottsboro, Falcon Communications) if they will forsake the competitor and return to the monopolist. *See* Scottsboro Comments, at 5-7.

23. These discounts and giveaways have effectively reduced the price of Charter's cable service in these communities to levels well below its own costs, thereby causing Charter to sustain losses it can recoup when its competitors are driven out of business.[7]

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[7] Even if one assumes that the only costs to be considered in the determination of whether Charter's costs are below its prices are the fees Charter pays for programming, the size of the inducements it is offering to Knology's customers are so great that Charter is still taking a significant loss on every new customer it takes from its competitors. *See* Scottsboro Electric Power Board's Answer to the Reply Comments of Charter Communications, Inc., CS Docket

24. Charter's tactics are unlawful, and defeat the national policy favoring competition among cable providers. *See Brooke Group,* 509 U.S. at 222; *Matsushita Electric Industrial Co. v. Zenith Radio Corp.,* 475 U.S. 574, 588-89 (1986); *see also Cable Television Consumer Protection and Competition Act of 1992,* H. R. Rep. No. 102-862, at 1-2, 34, 46 (1992) (conference report) ("[w]ithout the presence of another multichannel video programming distributor, a cable system faces no competition. The result is undue market power for the cable operator.").

25. The Commission has ample authority to address these unfair and anticompetitive tactics, and must do so in order to prevent Charter from undermining competition in the market for cable television services wherever it operates.

26. In particular, the Commission should order Charter to cease its predation on Knology, the SEPB and any other competitive cable provider it is now targeting with these tactics, based on the "repository of jurisdiction" Congress granted the Commission to act against any cable operator attempting to stifle competition or impede the broader distribution of video programming. *See* 47 U.S.C. § 548(b); *In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* 8 FCC Rcd 3359 (1993).

27. In addition, the Commission should make sure Congress is aware of the techniques Charter is using to suppress competition in the market for video programming services, and urge it to make more explicit in the law that those techniques are prohibited. As

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No. 01-129, at 2-3 (filed October 16, 2001). Of course, by any legal standard, at least some other costs would be added to Charter's programming charges to fairly compare its cost of providing service to the price it charges. *See, e.g., In re PanAmSat Corp. v. Comsat Corp.,* File No. E-96-21, FCC 97-172, at ¶ 17 (rel. May 20, 1997) (all nonfixed costs that would not be incurred if the evidenced by the comments Charter has filed in this proceeding, it either does not understand that its practice of below-cost pricing is not acceptable way to gain customers, or is betting that there is enough ambiguity in the statutes that the Commission will not attempt to prevent it.[8] Either way, the practice must stop, and a message must be sent to other monopoly cable providers that it will not be tolerated in their markets either.

Conclusion

28. Charter is pricing its services at predatory levels in order to eliminate competition from both public and private sector multichannel video programming distributors. The Commission must act at once to stop to these practices, thereby ensuring that the national policy of encouraging competition in the market for these services is not defeated.

Respectfully submitted,

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service were not offered, including cost increments in plant investment, network maintenance and customer operations).

8 *See* Reply Comments of Charter Communications, Inc., CS Docket No. 01-129, at 2-3 (filed September 5, 2001).

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CERTIFICATE OF SERVICE

Counsel undersigned hereby certifies that it served, by first class mail, postage prepaid, the foregoing Motion to File Late Comments in Response to Notice of Inquiry, and Comments of Knology, Inc., on counsel for the Scottsboro Electric Power Board and Charter Communications, Inc., in this proceeding:

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